

Highly Confidential - Attorneys' Eyes Only

13 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

15 Videotaped Patent Issues Deposition
16 of JOHN C. MITCHELL, Ph.D., taken at
17 755 Page Mill Road, Palo Alto, California,
18 commencing at 9:43 a.m., Tuesday,
19 September 6, 2011, before Leslie Rockwood,
20 RPR, CSR No. 3462.

25 | PAGES 1 - 270

Page 1

Highly Confidential - Attorneys' Eyes Only

1 A. I believe it's important to have adequate and
 2 attractive networking connections. Something that's not
 3 state-of-the-art would probably impede -- stands to
 4 reason something that's not state-of-the-art may impede
 5 sales.

6 As an additional factor, I just would point
 7 out that as far as I understand -- and it should be easy
 8 to find more information about it -- there are various
 9 manufacturers of wireless networking hardware, and one
 10 may be substitutable for another.

11 Q. So having a 3G air interface or above is also
 12 the basis for consumer demand for Android products?

13 A. I think I've explained the importance of that
 14 factor.

15 Q. Is it more or less important in the patents
 16 patents-in-suit, sir?

17 A. Well, one factor that comes to mind -- and
 18 there may be others -- that would occur to me on
 19 reflection is that there is -- I believe a -- some degree
 20 of substitutability across available networking hardware,
 21 whereas as I've laid out in this report, based on my
 22 study and evaluation to the best that I'm able to do
 23 this, it doesn't appear that there is reasonable
 24 substitutability of another platform for the platform
 25 that draws critically on the patents-in-suit.

Page 78

1 11:59 a.m.

2 You may proceed.

3 Q. BY MR. PAIGE: Welcome back, Professor
 4 Mitchell.

5 A. Thank you.

6 Q. You say that the Oracle employees Landau,

7 Poore and Vandette conducted certain experiments at your
 8 direction; correct?

9 A. I believe that's what it says in that report.

10 Q. Why did you choose to use Oracle employees
 11 rather than an independent consulting firm?

12 A. I believe that I asked if it was possible to
 13 get someone to help with some kinds of experiments like
 14 that or perhaps someone asked me if I knew students, and
 15 I suggested that perhaps someone who works for Oracle
 16 could be one possibility of doing that.

17 Q. Are there no consulting firms capable of
 18 doing the type of work that those employees did?

19 A. There may be. I didn't -- I didn't research
 20 that.

21 Q. Did you think it might be better to have
 22 someone independent rather than a partisan with a stake
 23 in the matter doing these experiments?

24 MR. PETERS: Objection. Form.

25 THE WITNESS: I didn't really even make that

Page 80

1 Q. So in your opinion, the patents-in-suit are
 2 more important than having a 3G air interface on an
 3 Android device?

4 A. That's not what I said.

5 Q. Well, what is your opinion? Are the
 6 patents-in-suit more important or is having a 3G air
 7 interface more important?

8 MR. PETERS: Objection. Form.

9 THE WITNESS: I believe that the -- and it
 10 would be possible to look into this if this is an
 11 absolutely critical issue, and maybe other people know
 12 more about it, but it strikes me that there are likely a
 13 number of different ways to assemble a phone with
 14 adequate networking so that an individual chip to provide
 15 networking could be replaced with another, whereas as I
 16 think I tried to explain, I don't see that as being an
 17 aspect of the patents-in-suit in the software technology
 18 at issue.

19 MR. PAIGE: Okay. We need to take a break to
 20 change the tape, please.

21 THE VIDEOGRAPHER: This is the end of Disk
 22 Number 1, Volume 1. We are off the record at 11:38 a.m.

23 (Recess.)

24 THE VIDEOGRAPHER: This is the beginning of
 25 Disk Number 2, Volume 1. We are back on the record at

Page 79

1 judgment. It didn't strike me that this would be an
 2 issue where partisanship or opinion would have much
 3 bearing on it. What I believe those engineers have done
 4 is modify the system in various ways that's easily
 5 documented and run the system with certain measurements
 6 afterwards. I think the results there are probably
 7 concrete and can be evaluated objectively.

8 Q. BY MR. PAIGE: Did you design the experiments
 9 conducted by Landau, Poore and Vandette?

10 A. I believe I did to a certain degree. That
 11 is, the experiments are to the -- as far as I recall,
 12 basically comparisons against the Android system or
 13 components of it as it exists now versus some
 14 modification. As far as I recall, those modifications
 15 were modifications that I suggested.

16 Q. Okay. So you're the one who came up with the
 17 actual modifications they implemented; is that right?

18 A. At some degree of detail, I believe so.

19 Q. Okay. You might not have done the actual low
 20 level code, but you told them on a high level, "This is
 21 what I'd like you to do in order to carry out this
 22 experiment"?

23 A. I don't remember the exact, you know, wording
 24 of the discussion, but I believe I handled it the same
 25 way I would with a graduate student. I want them to feel

Page 81

21 (Pages 78 - 81)

Veritext National Deposition & Litigation Services

866 299-5127

EXHIBIT 2-6